

JAMES W. GOUGH

IBLA 82-337

Decided June 23, 1982

Appeal from the decision of the Utah State Office of the Bureau of Land Management holding the Milkmaid's Daughter unpatented mining claim to be null and void. U MC 229784.

Affirmed as modified.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  
-- Withdrawals and Reservations: Effect of

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

APPEARANCES: James W. Gough, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James W. Gough appeals from the October 8, 1981, decision of the Utah State Office of the Bureau of Land Management (BLM), declaring the Milkmaid's Daughter lode mining claim, U MC 229784, to be null and void ab initio because it was located more than 14 years after the land had been withdrawn from mineral entry or location by Public Land Order No. 4060; 31 FR 10033 (July 18, 1966). The withdrawal was imposed for the protection of the watershed of the North Fork of the American Fork Canyon.

[1, 2] There appears to be some confusion concerning the date of location of this claim. BLM's assertion that it "was located more than 14 years after the subject lands were withdrawn" is based upon the notice of location which the appellant signed and filed with BLM, which states that the claim was "[l]ocated this 8th day of November, 1980." However, the record contains proofs of labor filed by appellant dating back to 1971. In his statement of reasons for appeal, appellant states, "We have had this claim since 1971."

Assuming that the location notice is incorrect, and that the claim was located in 1971 (which seems more likely), the location would still have been attempted 5 years after the land was closed to mineral entry. Moreover, if the claim was located in 1971, or even prior to the withdrawal in 1966, the law would require that it be conclusively deemed to be abandoned and void, as claims located prior to October 21, 1976, must have been recorded with BLM prior to October 22, 1979. 43 U.S.C. § 1744 (1976); 43 CFR 3833.1-2. The Milkmaid's Daughter claim was not recorded with BLM until November 12, 1980. Accordingly, the claim is void regardless of when it was located.

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void. Richard Thorpe, 59 IBLA 176 (1981). A claim lawfully located on land which at the time was open to location must nevertheless be deemed abandoned and void upon failure to comply with the recordation and filing requirements of the statute and regulation, supra. Modoc Gem and Mineral Society, 58 IBLA 142 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Edward W. Stuebing  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Douglas E. Henriques  
Administrative Judge

